It must be borne in mind, however, that the fact that the prosecution has taken statements from witnesses and has subpoenaed them may place the accused in an awkward position if suddenly faced with the offer of a witness, whose statement he has never seen. This difficulty could probably be met in most cases by supplying to the accused a copy of the statements of the witnesses not called by the prosecution. Where this course appears undesirable or for any other reason has not been followed the Court would no doubt in a proper case grant an adjournment to enable the accused to take statements from such witnesses.

The above remarks assume that the witness will give evidence in accordance with his statement. Where a prosecution witness whose statement is favourable to the prosecution gives evidence favourable to the defence, he should be discredited in accordance with the procedure laid down in detail in the judgment of Taylor J. in *Muthusamy v. Public Prosecutor*[3] which was approved and followed in *Jusoh bin Awang v. Public Prosecutor*[5].

Appeal dismissed.

Solicitors for the appellant: *Hogan, Adams & Allan.*

In re A TAX-PAYER (No. 2)

[A. C. J. (Murray-Aynsley C.J.) July 19, 1955]

[Singapore — District Court Appeal No. 50 of 1954]

Income Tax Ordinance, 1947 — Assessment — "Share of partnership income" — Capital appreciation during continuance of partnership — Death of owner of beneficial interest — Whether this ipso facto determines partnership.

In this case the taxpayer and X entered into a partnership agreement on April 13, 1950, with the Y — Co. for the development into a building estate of a large piece of land owned by the latter as trustees for Z. Z died on April 16, 1951. After his death, the Company entered into an arrangement with the appellant and X to sell the land which had meanwhile appreciated considerably in value and the difference between the sale value and its original value was shared between the partners in accordance with the terms of the partnership agreement.

The taxpayer's share was assessed as partnership income and the Board of Review upheld the assessment.

On appeal the taxpayer contended that (1) his share should not have been assessed as partnership income; (2) Z's death had determined the partnership; and (3) there had been a dissolution of the partnership by agreement.

Held: (1) capital appreciation during the continuance of the partnership was taxable income; (2) Z's death did not *ipso facto* determine the partnership and the partnership continued to be in existence until the land was sold; (3) there had been no actual dissolution.

[**Editorial Note:** The Income Tax Ordinance, 1947 is now Chapter 166 of the Laws of the Colony of Singapore, Edition of 1955.]

INCOME TAX APPEAL.

C. H. Smith for the appellant.

A. V. Winslow (Crown Counsel) for the respondent.

Murray-Aynsley C.J. : — This appeal concerns an assessment of $35,842.33 on the sum of $119,474.45 "share of partnership income". The facts are as follows :—

The late Mr. R. M. Z — owned among other things the beneficial interest in a large piece of land in the neighbourhood of K. H. Road. The Y — Trustee Ltd. (who may be described as the Company) were the trustees. For the purpose of exploiting the land in question an agreement was entered into on the 13th April 1950 between the Company on the one part and two persons of whom the appellant was one, on the other. The scheme was that the Company should contribute the land valued at $414,000, and the parties on the other part should contribute the cost of development and also the specialized knowledge and the time and trouble necessary for the development of a building estate. Profits and losses were to be divided equally between the parties of the 1st and 2nd parts. The word "partnership" is not used in the agreement but it is not disputed that this agreement constituted a partnership and made the parties partners.

The matter did not proceed as had been expected. On 16th April 1951 Mr. Z — died suddenly before any development had taken place. The Company with other persons were executors of his will. As such they desired to realize such assets as were most easily to be disposed of for the purpose of paying estate duties. Among these was the land in question. By agreement among the parties this land was sold for rather more than $900,000. The difference between this sum and the original value of the land was divided between the parties in accordance with the terms of the agreement. The appellant's share is the sum assessed as partnership income. In view of the objects of the agreement it is clear that capital appreciation during the continuance of the partnership would be "income" for the purpose of taxation. It is not contended that the activities of the appellant were such as to render capital appreciation of land income otherwise than under the agreement. It seems to me, therefore, that the whole question depends on whether the partnership continued until the land was sold. I am satisfied that the death of Mr. Z — did not *ipso facto* determine the partnership. It was contended that there was a dissolution by agreement. There seem to have been discussions in which the phrase "forgetting about the agreement" was used. But I cannot see that there was an actual dissolution. If there had been the appellant would have received

a share of capital appreciation which would have been income but he would not after dissolution have had any interest in the land. That is, if the parties had forgotten about the agreement the appellant would not have been entitled to anything. Apart from the agreement he had no interest in the land. As it was, he received exactly what he was entitled to under the agreement, which indicates that the partnership was still in existence. I think the assessment was correct and the appeal must be dismissed.

Appeal dismissed.

Solicitors: *Donaldson & Burkinshaw*

In re A.B. LTD.

[A. C. J. (Whyatt C.J.) June 29, 1956]

[Singapore — District Court Appeal No. 1 of 1955]

Income Tax Ordinance, 1947, ss. 10 & 77 — Revenue derived from sale of burial plots — Whether "income in respect of gains or profits from a trade" — Income tax chargeable on income from trade ultra vires memorandum of association — Extent of deduction allowable.

Appeal — Question of mixed law and fact — Determination on a question of fact.

The respondents were estate owners carrying on the trade or business of rubber planting in different parts of Malaya. On a portion of one of their estates in Singapore all the rubber trees had been felled during the Japanese occupation and it was not considered profitable to use it again for rubber growing owing to the high cost of replanting and rather infertile character of the area. They decided to use part of their land in question as a cemetery, and accordingly they applied to the Government and obtained licence to use the land for Chinese burial purposes. They set aside one acre for use as a cemetery and built on it a temple, tiffin shed and caretaker's quarters and an access road at a total cost of approximately $30,000. In July 1948 they commenced disposing of the burial plots which varied in size. The only document which came into existence when they disposed of a burial plot was a receipt, signed by the secretary of the respondents, acknowledging that the respondents had received a stated sum "in payment of one lot of burial land . . . on our land at Jurong. The burial is subject to the Government's regulations and bye-laws for the time being in force." The burial ground grew steadily in popularity and by the end of 1954 the total area set aside for burial purposes had been increased to 12 acres.

The Comptroller of Income Tax having become aware of the respondents' activities in connection with this cemetery, wrote to them in August 1953 stating that he proposed to assess them "on the profits from the business of sale of burial plots", and in due course notices of assessment were served on the respondents claiming $3,406.50, $1,756 and $7,696.80 for the years 1951, 1952 and 1953 respectively. The respondents appealed to the Board of Review against the assessment on the ground that the disposal of these burial plots was a realisation of capital assets and consequently any revenues from this source were not assessable to income tax. The Comptroller, on the other hand, contended that the respondents were carrying on the trade or business of cemetery proprietors and any excess of income over expenditure was rightly assessed to income tax, as being "income in respect of gains or profits from a trade" within the meaning of section 10 of the Income Tax Ordinance, 1947. The Board found in favour of the respondents. The Comptroller appealed against that decision.

Held: (1) the disposal of a burial plot was not in law an outright sale of the land and consequently the respondents were not realising capital assets; (2) the revenue derived from selling burial plots was profit from a trade and consequently chargeable to income tax under section 10 of the Income Tax Ordinance, 1947; (3) if the activities of the respondents in relation to the disposal of burial plots were *ultra vires* their memorandum of association (which the Court did not think was the case) income tax was nevertheless chargeable on the profits of the trade; (4) no deduction in respect of the cost of land used as grave spaces can be made in the Colony unless and until the Income Tax Ordinance is amended on the lines of section 22 of the United Kingdom Finance Act, 1954.

It was also contended on behalf of the respondents that the finding of the Board that the respondents were not carrying on a trade was a pure finding of fact and therefore the Court was bound by that finding, even though it might have reached a different conclusion if it had been considering the matter *de novo*.

Held: an appellate Court may allow an appeal from a determination on a question of fact if it appears to the appellate Court that no person acting judicially and properly instructed as to the relevant law could have come to the determination under appeal. **Edwards v. Bairstow**(6) followed.

[**Editorial Note:** The Income Tax Ordinance, 1947 is now Chapter 166 of the Laws of the Colony of Singapore, Edition of 1955. Sections 10 and 77 are now sections 10 and 81 respectively.]

Cases referred to:—

(1) *Inland Revenue Commissioners v. Duke of Westminster* (1936) A.C. 1, at p. 19.

(2) *Portobello Town Council v. Sulley (Surveyor of Taxes)* 2 T.C. 647.

(3) *Paddington Burial Board v. Commissioners of Inland Revenue* 2 T.C. 46.

(4) *Edinburgh Southern Cemetery Co. v. Kinmont (Surveyor of Taxes)* 2 T.C. 516.

(5) *London Cemetery Co. v. Barnes* (1917) 2 2 K.B. 496.

(6) *Edwards (Inspector of Taxes) v. Bairstow* (1955) 3 All E.R. 48; (1956) A.C. 14; (1955) 3 W.L.R. 410; 36 T.C. 207.

(7) *Mann v. Nash* (1932) 1 K.B. 752; 16 T.C. 523.

(8) *Southern v. A.B. Ltd.* (1933) 1 K.B. 713; 18 T.C. 59.

(9) *British Insulated and Helsby Cables v. Atherton* (1926) A.C. 205, at p. 213; 10 T.C. 155.

INCOME TAX APPEAL.

G. S. Hill (Crown Counsel) for the appellant.

C. H. Withers-Payne for the respondents.

Whyatt C.J. : — This is an appeal from a decision of the Board of Review which decided that the respondents were not liable to pay income tax in respect of receipts from the disposal of Chinese burial spaces on their land in Singapore.